

REMARKS

A. The Status of the Claims and the Amendments

Claims 1, 47, 49-51, and 55 are pending. Claims 2-46, 48, 52-54, and 56-59 were previously canceled. It is submitted that in view of the remarks that follow, all the claims are in condition for allowance or a better condition for appeal. Entry of the remarks is respectfully requested.

B. Rejection Under 35 U.S.C. § 103(a)

Claims 1, 47, 49-51, and 55 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,193,951 to Ottoboni et al. ("Ottoboni") in view of U.S. Patent No. 5,498,421 to Grinstaff et al. ("Grinstaff"), U.S. Patent No. 5,469,854 to Unger et al. ("Unger"), and U.S. Patent No. 4,960,595 to Hirota et al. ("Hirota") (the penultimate paragraph on page 2 of the Office Action). This rejection is respectfully traversed on the following grounds.

The Examiner has stated that Ottoboni teaches bi-layered shell microspheres that allegedly meet all the limitations of claim 1 but fails to describe that the microspheres include a lipid component (see, the last paragraph on page 2 through the first paragraph on page 3 of the Office Action). To cure this deficiency of Ottoboni, the Examiner proposes to combine the teaching of Ottoboni with those of Grinstaff, Unger and Hirota.

In response, the Applicant respectfully points out that Ottoboni is not available as a primary reference for the purposes of setting forth a valid prima facie case of obviousness for the following reasons.

The effective filing date of the present application is May 13, 1997, which is the filing date of the provisional application USSN 60/046,379, to which the present application claims priority. The priority date of Ottoboni is April 30, 1997, i.e., the filing

date of the parent application USSN 08/847,153 to which Ottoboni claims priority, i.e., less than one year prior to the effective filing date of the present application. Accordingly, the only possible way the reference may be used for the obviousness rejection is under 35 U.S.C. § 102(e)/103(a).

The Applicant has executed a Declaration under 37 C.F.R. §1.131. As stated in the Declaration, this invention was conceived of and reduced to practice prior to the priority date of Ottoboni. Therefore, the present invention was conceived of and reduced to practice prior to the earliest priority date Ottoboni. Accordingly, in accordance with MPEP §§ 706.02(b) and 715.01, Ottoboni is considered antedated for the purposes of 35 U.S.C. § 102 (e), and is not available for the purposes of making out a valid *prima facie* case of obviousness under 35 U.S.C. § 103.

Since the combination of art used by the Examiner to formulate the obviousness rejection requires using Ottoboni, no *prima facie* case of obviousness can be stated without using this reference. It is, therefore, submitted that the §103(a) rejection does not apply.

In view of the foregoing, claim 1 is patentably distinguishable over Ottoboni in view of Grinstaff, Unger, and Hirota. Each of claims 47, 49-51 and 55 depends on claim 1, directly or indirectly, and is considered patentable for at least the same reason. Withdrawal of the rejection and reconsideration are respectfully requested.

In re Application of:
Evan C. Unger
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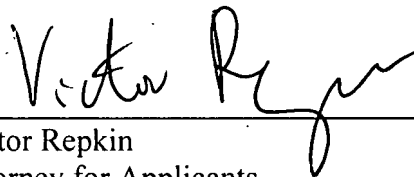
CONCLUSION

In view of the above remarks, reconsideration and favorable action on all claims are respectfully requested. In the event any matters remain to be resolved, the Examiner is requested to contact the undersigned at the telephone number given below so that a prompt disposition of this application can be achieved.

Check number 586623 in the amount of \$1020.00 is enclosed as payment for the Petition for Three-Month Extension of Time fee. No other fee is believed to be due in connection with filing this submission. However, the Commissioner is hereby authorized to charge any other fees associated with the filing submitted herewith, or credit any overpayments to Deposit Account No. 07-1896 referencing the above-identified attorney docket number. A copy of the Transmittal Sheet is enclosed.

Respectfully submitted,

Date: August 8, 2007



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Evan C. Unger	Art Unit:	1617
Application No.	10/084,855	Examiner:	Layla Soroush
Filed:	February 27, 2002	Conf. No.	8641
Title:	NOVEL ACOUSTICALLY ACTIVE DRUG DELIVERY SYSTEMS		

MAIL STOP AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

DECLARATION OF APPLICANT UNDER 37 C.F.R. § 1.131

I, Evan C. Unger, do hereby declare and state that:

1. I am the inventor of the subject matter described and claimed in the U.S. Patent Application Serial No. 10/084,855, filed February 27, 2002 entitled "Novel Acoustically Active Drug Delivery Systems."

2. I am familiar with the prosecution history of Patent Application Serial No. 10/084,855.

3. I understand that the Examiner rejected claims 1,47, 49-51, and 55 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,193,951 to Ottoboni et al. in view of U.S. Patent No. 5,498,421 to Grinstaff et al., U.S. Patent No. 5,469,854 to Unger et al., and U.S. Patent No. 4,960,595 to Hirota et al.

4. I am aware of the fact that the present application Serial No. 10/084,855 has the effective filing date May 13, 1997, which is the filing date of the parent application Serial No. 60/046,379 to which the present application Serial No. 10/084,855 claims priority.

5. I have reviewed U.S. Patent No. 6,193,951 to Ottoboni et al. and am aware that it was published February 27, 2001, which is after the above-mentioned effective filing date of the present application Serial No. 10/084,855. I am also aware that U.S. Patent No. 6,193,951 to Ottoboni et al. has its earliest is priority date of April 30, 1997, which is the filing date of the

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Applicant: Unger
Filed: February 27, 2002
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parent application USSN 08/847,153 to which U.S. Patent No. 6,193,951 to Ottoboni et al. claims priority.

6. I respectfully submit that the claimed invention was conceived in the United States and reduced to practice prior to April 30, 1997, the earliest priority date of U.S. Patent No. 6,193,951 to Ottoboni et al.

7. I further declare that all statements made herein of knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine, or imprisonment, or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

8-8-07

Date

Evan C. Unger

Evan C. Unger